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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of Section 69.2(m) and (ee) of The Commission's Rules To Include Independent Public Payphones Within The "Public Telephone" Exemption From End User Common Line Access Charges	)	RM No. 8723

OPPOSITION

BellSouth Telecommunications, Inc. ("BellSouth") herewith opposes the above-captioned petition for rulemaking, filed October 23, 1995, by the American Public Communications Council, Inc. ("APCC"). Although APCC has chosen the appropriate procedural vehicle to challenge longstanding policies embodied in Sections 69.2(m) and (ee), 47 C.F.R. Sections 69.2(m) and (ee), no change in circumstances has occurred to make application of the current rules unjust or unreasonable. Accordingly, the requested amendments are unwarranted and the petition must be denied.

DISCUSSION

On October 23, 1995, APCC filed a petition to obtain revisions to Sections 69.2(m) and (ee) of the Commission's Rules. If adopted, these changes will exempt independent payphone providers (IPPs) from payment of the end user common line charge (EUCL), which recovers a portion of the non-traffic sensitive costs of the public switched network. The instant petition is but the most recent attack on the application of this charge to IPPs, and comes in the wake of a Commission decision adverse to APCC and its supporters.[1]

APCC cites three considerations in support of the rule change. First, it is contended that IPP payphones, like LEC-provided payphones, are not dedicated to a particular subscriber but offered instead for use by the general public. Second, APCC maintains that an amendment is necessary to eliminate unlawful discrimination in applying the EUCL to IPP equipment while exempting LEC payphones. Third, APCC argues that the requested rule change need not create a revenue shortfall since IPP payphone investment (like LEC payphone investment) can be recovered through the carrier common line charge (CCLC).

None of the reasons posited has merit. While it is true that IPP and LEC payphones are alike available for general public use, LEC equipment remains unique in that it presents no readily identifiable end user who may be held accountable for payment of the EUCL. It was this characteristic (not the public use of equipment) which persuaded the Commission to adopt a different cost recovery method for LEC payphone investment.[2] By contrast, IPP service is

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1 See APCC Petition for Declaratory Ruling That End User Common Line Access Charges May Not Be Assessed on Competitive Public Pay Telephones, filed April 21, 1989. On September 6, 1995, the Commission released its decision in C.F. Communications Corporation v. Century Telephone of Wisconsin et al., 10 FCC Rcd 9775 (1995), affirming plaintiff's liability for payment of the EUCL pursuant to Section 69.2(m). Alternatively, the Commission upheld an earlier determination by the Common Carrier Bureau that plaintiff was a provider of "semi-public" service and on this basis liable for the end user charge.

2 "After weighing the relative advantages and disadvantages of each proposal we have concluded that the best solution to the dilemma is to eliminate

offered over exchange access lines which present an identifiable business subscriber. It shares this feature with LEC-provided semi-public service; accordingly, both IPP and semi-public service applications are subject to EUCL assessment.

These provisioning differences justify the use of different cost recovery methods and defeat APCC's claim of unlawful discrimination. Moreover, there is no record evidence to support the allegation that liability for EUCL charges creates a substantial competitive disadvantage for IPP payphones vis-a-vis LEC payphones. On the contrary, any such detriment would be offset by the receipt of operator service provider (OSP) commissions and dial-around compensation--revenue sources which are available to IPPs but not to LEC payphone providers.

Finally, the recovery of IPP line investment through the CCLC would in effect create a subsidy for one segment of the telecommunications industry, funded by all users of the public switched network. This result is flatly contrary to the Commission's policy favoring recovery of costs from the cost causer.

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the rate element for coin telephones which can access the services of multiple interexchange carriers, and to reassign the costs associated with coin telephones to the common line revenue requirement. The ideal solution would be to recover the nontraffic sensitive costs of public pay phones also from end users who rely upon pay phones to originate their interstate calls. We are convinced, however, that at this time this ideal cannot be achieved." MTS and WATS Market Structure, CC Docket No. 78-72 (Phase I), First Reconsideration Order, 97 F.C.C.2d 682, 705 (1983).

CONCLUSION

BellSouth recognizes that legislative or regulatory developments may in the future alter the manner of LEC payphone provisioning and warrant a reexamination of the Commission's policy for assessment of the EUCL. Nevertheless, none of the reasons advanced by APCC supports a rule change at this time. Accordingly, the Commission should deny APCC's petition and reaffirm current rules applying the end user charge to IPP equipment.

Respectfully submitted,

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DATE: December 4, 1995

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that I have this 4th day of December, 1995 served all parties to this action with a copy of the foregoing OPPOSITION by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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